



# बिहार गजट

## असाधारण अंक

### बिहार सरकार द्वारा प्रकाशित

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31 भाद्र 1936 (श०)  
(सं० पटना 774) पटना, सोमवार, 22 सितम्बर 2014

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निर्वाचन विभाग

अधिसूचना

12 सितम्बर 2014

सं० डी1-41/2014-91—श्री नवल किशोर यादव के निर्वाचन पर प्रश्न उठाते हुए श्री जर्नादन प्रसाद सिंह द्वारा दर्ज की गई निर्वाचन याचिका संख्या 1/2008 में पटना उच्च न्यायालय द्वारा पारित आदेश से संबंधित भारत निर्वाचन आयोग की अधिसूचना संख्या 82/बिहार-वि.प./1/2008/2014 (ए) दिनांक 03.09.2014 एवं अधिसूचना संख्या 82/बिहार-वि.प./1/2008/2014 (बी) दिनांक 03.09.2014 सर्वसाधारण की जानकारी के लिए प्रकाशित की जाती है।

बिहार-राज्यपाल के आदेश से,  
हुसैन यूसुफ रिजवी,  
अपर सचिव।

## भारत निर्वाचन आयोग

## अधिसूचना

निर्वाचन सदन, अशोक रोड़, नई दिल्ली-110 001 दिनांक: 03 सितम्बर, 2014/भाद्रपद 12, 1936 (शक)

सं082/बिहार,-वि.प./1/2008/2014 (ए) – लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 106 के अनुसार में, भारत निर्वाचन आयोग पटना शिक्षक निर्वाचन क्षेत्र से बिहार विधान परिषद के लिए एक सदस्य के रूप में श्री नवल किशोर यादव के निर्वाचन पर प्रश्न उठाते हुए श्री जनार्दन प्रसाद सिंह द्वारा दर्ज की गई 2008 की निर्वाचन याचिका सं01 पर पटना स्थित उच्च न्यायालय के दिनांक 15 मई, 2009 के आदेश को एतद्वारा प्रकाशित करता है।

आदेश से,  
के. अजय कुमार,  
प्रधान सचिव।

## ELECTION COMMISSION OF INDIA

## NOTIFICATION

**Nirvachan Sadan, Ashoka Road, New Delhi -110 001** Dated : 03<sup>rd</sup> September, 2014/  
Bhadrapada 12, 1936 (Saka)

No. 82/BR-LC/1/2008/2014 (A)–In pursuance of Selection 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 15<sup>th</sup> May, 2009, of the High Court of Judicature at Patna in Election Petition No. 1 of 2008 filed by Sh. Janardan Prasad Singh calling in question the election of Sh. Nawal Kishore Yadav as a member of the Legislative Council of Bihar from Patna Teachers' constituency.

By order,  
K. AJAY KUMAR,  
Principal Secretary.

IN THE HIGH COURT OF JUDICATURE AT PATNA

E.P. No-1 of 2008

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Janardan Prasad Singh, son of Late Ram Lakhan Singh, Resident of Village-Rupaspur, P.S. Chandi, District- Nalanda at Biharsharif.

..... Election petitioner

Versus

Sri Nawal Kishore Yadav, son of Hari Rai, Resident of Mohalla-Pathar Gali, P.S. Shastri Nagar, District- Patna.

..... Respondent

For the Petitioner : Mr. S.B.K. Mangalam, Advocate  
Mr. Sanjay Kumar, Advocate  
Mr. Birendra Kumar, Advocate

For the Respondent : Mr. S.N.P. Sharma, Senior Advocate  
Mr. Amrendra Kumar, Advocate

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16. 15.5.2009. Election of sola returned respondent, namely, Nawal Kishore Yadav, for Bihar Legislative Council pertaining to Patna Teachers Constituency for which election was held on 28.4.2008 is subject matter of challenge in the present election petition filed under Section 80 and 80A of the Representation of People Act, 1951(hereinafter to be referred to as 'the Act'), The result was declared on 30.4.2008 where the petitioner is supposed to have got 2115 votes and the returned candidate 2823 votes. The difference between the petitioner and the returned candidate was of 708 votes.

Many statements have been made in the election petition and in support there of certain documents have been annexed as annexures but the same have a limited reflection on the election petition as a whole because when the list of issues came to be filed by the petitioner as well as the respondent, a preliminary objection was sought to be raised by the respondent that the election petition as framed is not maintainable and the Election petition was fit to be dismissed summarily under Section 86 (i) of the Act, for non-compliance of mandatory provisions of Section 81,82 and 117 read with Section 100 of the Act. The Court decided, therefore, to examine this legal aspect of the matter after giving an opportunity to both the sides. For true appreciation, therefore, it is desirable the all the proposed issues and supplementary proposed issues filed by the petitioner be reproduced here in below:-

- (I) Whether, the guidelines/instruction issued by the Election Commission of India in exercise of Power under Article 324 of the Constitution for the preparation of electoral roll & for and the conduct of Elections has the force of law and non compliance there of would render the election of the Sole respondent void under the provisions of Section 100 (1)(d)(iv) of the R.P. Act, 1951.
- (II) Whether for the non compliance of the guide lines/instructions issued by the Election Commission

- of India in connection with impugned election, the election of the sole Respondent is fit to be declared void under Section 100(1)(d)(iv) of the R.P. Act 1951.
- (III) Whether for the Registration of unqualified and ineligible persons as electors by the Electoral Registration Officer in the Voter-list prepared for conducting the impugned election contrary to the guide lines/instruction issued by the Election Commission of India in exercise of Power under Article 324 of the Constitution and votes cast by those unqualified voters, the election of the sole Respondent of fit to be declared void under Section 100(1)(d)(iii) of the R.P. Act.
- (IV) Whether the votes cast by unqualified voters has materially affected the result of the election and thus the election of the sole Respondent is fit to be declared void under the provisions of Section 100(1)(d)(iii) of the R. P. Act.

Supplementary Issues :

- (I) Whether there is any scope for the Electoral Registration Officer to entertain any fresh application from for Registration of voters in the voter list after expiry of the last of submission of such form for Registration and after the publication the publication of draft voter list for the impugned election and if so the election of the sole Respondent is fit to be ser as ide under Section 100(1)(d)(iv) of the R.P.Act 1951.
- (II) Whether, the election of the sole Respondent from Patna Teachers constituency is fit to be declared void under the provisions of Section 100(1)(d)(iv) of the R.P.Act 1951 on the Ground that the voter list for the said election was prepared by the Election Registration Officer dehors the Provisions contained in Section 27(3) (6), 27(5)(b) and 27 (6) of the R.P.Act 1950 and Article 171 (3) (c) of the Constitution of India and if has materially affected the result of election.
- (III) Whether failure on the part of the Election Commission of India to entertain the complaint against the inherent irregularities and illegalities in preparation of voter list for the election in question despite direction of this Hon'ble High Court is sufficient to conclude that the Election Commission of India has failed to discharge its statutory duty to conduct a free and fair election in Patna Teachers constituency and the election of the sole Respondent is fit to be declared void on this ground alone under the provision of Section 100(1)(d)(iv) of the R.P.Act 1951.
- (IV) Whether the election of the sole Respondent is fit to be declared void under the provision of Section

100(i)(d)(iii) of the Representation of Peoples Act 1951 for having been so declared elected by the votes of unqualified voters who had no right to vote in the said election.

- (V) Whether the election of the sole respondent is otherwise also bad in law and thus fit to be declared void by this Hon'ble Court.

It is also necessary, therefore, to take note of the proposed issues on behalf of the sole respondent, which is also reproduced here in below:-

- (I) Whether the election petition as framed is maintainable?
- (II) Whether the election petition is fit to be dismissed summarily under Section 86(i) of the Representation of Peoples Act, 1951 for non-compliance of mandatory provisions of Sections 81, 82 and 117 of the said Act read with Section 100 of the Act?
- (III) Whether the election petition is fit to be dismissed summarily under Order VII, Rule 11 of the Code of arises out of vague pleadings of general nature and not containing material facts and material particulars?
- (IV) Whether the allegations as contained in paragraphs I to 67 of the election petition are fit to be deleted from the pleadings of election petition as the allegations of commission of illegalities and irregularities in preparation of voter list are justifiable in an election petition being beyond the ambit and scope of Section 81 and 100 of the Representation of Peoples Act, 1951?
- (V) Whether the allegations as contained in paragraphs 68 to 70 of election petition are fit to be struck off under Order VI, Rule 16 of the Code of civil procedure being not containing an adequate statement of material facts and full particulars and also not containing the prescribed affidavit in Form- 25 as required under the mandatory provision of Section 83 of R.P.Act 1951 read with Rule 94-A of Conduct of Election Rules, 1961? If so, election petition is fit to be dismissed under order VII, Rule 11(a) C.P.Code for not disclosing the completed cause of action?
- (VI) Whether election petition is not an election petition in the eye of law? If so, whether election petition is fit to be dismissed summarily to prevent the abuse of process of law?

The Court has been taken through the election petition, the material brought thereto. The contention of learned senior counsel appearing for the respondent thereafter is that if the election petition is read as a whole then the sum essence of the same is that the election, as such has been called in question, on the ground that the election has been conducted and votes polled on the basis of an electoral roll in which many voters have been enrolled in flagrant violation of the mandatory

provisions of law and the rules which relate to the provisions of Representation of Peoples Act, 1950 and the Registration of Electors Rules, 1960. The allegations primarily relate to the irregularities and illegalities in preparation of the election rolls allowing the voters to get on to the rolls after cut off dates for which the official respondents of the Election Commission have been charged with either connivance or failure in this regard. Contention of the respondent, therefore is that the validity of the electoral rolls cannot be challenged by filing an election petition. The validity of an election has to be tested within the ambit and the no vision of Section 81 and 100 of the Representation of Peoples Act, 1951. Since the allegations and the issues proposed on behalf of the petitioner are beyond the scope of Section 81 and Section 100, therefore, there is no occasion for his Court to maintain the election petition or adjudicate upon the validity of the election or the result thereof of the returned candidate.

Section 80 of the Act provides that no election shall be called in question except by an election petition presented in accordance with the provisions of the part. This obviously refers to Part VI which is under the heading “Disputes Regarding Election”. Section 80A of the Act gives the High Court the jurisdiction to try such an election petition. Section 81 then provides that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 by any candidate at such election or any elector. The explanation of the said section is to the effect that “elector” means a person who was entitled to vote at the election to which the election petition relates. Section 83(1)(a) provides that the election petition shall contain a concise statement of the material facts on which the petitioner relies. Section 86 provided that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or section 117. The grounds for declaring the election to be void are mentioned in section 100 and the grounds for which a candidate other than the returned candidate may be declared to have been elected are mentioned in section 101 of the Act provides:

“100 Grounds for declaring election to be void.

- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion-
  - (a) That on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the constitution or this Act of the Government of Union Territories Act, 1963 (20 of 1963); or
  - (b) That any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
  - (c) that any nomination has been improperly rejected; or
  - (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-
    - (i) by the improper acceptance or any nomination, or
    - (ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or
    - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

- (iv) by any non-compliance with the provisions of the Constitution of of this Act or of any rules or orders made under this Act,  
the High court shall declare the election of the returned candidate to be void.

Learned counsel for the election petitioner fairly conceded in course of argument that the election petitioner seeks quashing of the election on the grounds mentioned in section 100(1)(d)(iv). In other words his contention is that the election of the returned candidate namely the respondent has been materially affected by non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act. The question for consideration, therefore, is whether on the averments made in the election petitions the grounds referred to in section 100(1)(d)(IV) is attracted or not.

It was argued on behalf of the respondent that the Act or any rules or orders made under the Act refers to the provisions of the Representation of People Act 1951 and not to the Representation of People Act 1950 or the rule or orders made under the said Act. Section 1 of the Act under caption "short title" mentions that this Act may be called as the Representation of the People Act 1951. There is no dispute between the parties that the provisions for preparation of electoral roll and the manner of filling seats in the Council of the State among other things are provided in the Representation of the People Act 1950, part IV of the Act of 1950 deals with electoral rolls for Council Constituencies. Under section 27(2)(e) of the 1950 Act the provisions of Sections 15, 16, 18, 22 and 23 shall apply in relation to local authorities, constituencies, constituencies as they apply in relation to assembly constituencies. Sections 22 and 23 of the said Act provides for correction of entires in electoral rolls and inclusion of names in electoral rolls for the purpose of assembly Constituencies and section 23(3) provides that no amendment, transposition or deletion of any entry shall be made under section 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituencies comprised and before the completion of that election. Section 30 of the Act excludes the jurisdiction of the civil courts to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency. The provisions of section 20 needs to be noticed for it provides for correction of entries in electoral rolls. The Electoral Registration Officer for a constituency is authorized to amend, transpose or delete an entry in the electoral roll of the constituency on any of the grounds mentioned under clauses (a), (b) and (c) of the said section and he can exercise such power on either on his own motion or on an application made to him. Such power of the Electoral Registration Officer is, however, to be exercised subject to the general or special direction as may be given by the Election Commission.

To cut a long story short the election of the respondent has not been challenged on the ground that he suffered from any disqualification for contesting the election provided either under the Constitution or the Act or 1950 or 1951 or under any rules framed under the Act. The only ground on which the election is challenged is that names of certain teachers were included in the electoral roll illegally and without jurisdiction when they were not otherwise fit to be included. The argument advanced is that for this purpose the Act of 1950 itself made the provision for making the necessary correction and the Act of 1950 is a self contained

Act. The illegality and irregularity committed in the preparation of the electoral roll was a matter to be disposed of within the provisions of the Act of -1950 and any such illegalities or irregularities referred to above could not be a valid ground for setting aside the election of the returned candidate under section 100 of the Act of 1951.

In *P.R. Belagali vs. B.D. Jatti* (A.I.R. 1971 S.C.1347) the Supreme Court held that section 100(1) (d) of the Act does not entitle the Court in an election petition to set aside any election on the ground of non-compliance with the provisions of the Act of 1950 or any rules made thereunder with the exception of section 16 of the Act of 1950. In an election petition the correctness of the Electoral Roll cannot be gone into. The court was further pleased to observe that the entire scheme of the Act of 1950 and the complitude of its provisions show that the entries made in an Electoral Roll of a constituency can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless the question of violation of the provisions of Constitution is involved. It may be mentioned that under section 16 of the Act of 1950 a person is disqualified for being registered in an electoral roll if he (a) is not a citizen of India; or (b) of unsound mind and stands so declared by a competent court; or (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections. The averments made in different paragraphs of the present election petition do not contain any allegation with regard to violation of the provisions of section 16 of the 1950 Act.

To reinforce the arguments learned senior counsel appearing for the respondent relies on a recent enough decision of the Hon'ble Supreme Court which is the case of **Shyamdeo Pd. Singh v. Nawal Kishore Yadad**, (2000) 8 SCC 46. It is contended that a bare reading of the above decision of **Shyamdeo Pd. Singh** (supra) and the ratio laid down therein fully covers the submissions which have been made at the Bar in opposition to the maintainability of the present election petition. There are identical or similar issues which came to be decided by the Hon'ble Supreme Court on appeal from the decision of the Patna High Court. According to the learned counsel appearing for the respondent the judgment is a complete answer to the election petition filed on behalf of the petitioner.

Learned counsel appearing for the petitioner, however, submits that Section 100(1)(d)(iv) of the Act includes and contemplate non-compliance of any part of the Act or rules as a ground for challenge and in support thereof he relies upon paragraph 21 of a decision rendered in the case of **Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman**, A.I.R. 1985 S.C. 1233, which is reproduced herein below:-

“One of the questions which was debated before us and to which we must not turn, is whether the directions given by the Election Commission to the Chief Electoral Officers have the force of law under the Acts of 1950 and 1951. There is no provision in either of these acts which would justify the proposition that the directions given by the Election Commission have the force of law. Election Law are self-contained Codes. One must look to them for identifying the rights and obligations of the parties, whether the absence of a provision to that effect, it would not be correct to equate with law, the directions given by the Election Commission to the Chief Electoral Officers. The Election Commission is, of course, entitled to act *ex debito justitiae*, in the sense that, it can take steps be taken over and



above those which it is under and obligation to take under the law. It is, therefore, entitled to issue directions to the Chief Electoral Officers. Such directions are binding upon the latter but, their violation cannot create rights and obligations unknown to the Election Law. To take a simple example, if the Election Commission issues a directive to a Chief Electoral Officer to invite leaders of political parties for a meeting to consider their grievances pertaining to the electoral roll, the failure to hold such a meeting cannot be equated with the failure to comply with the provision of a law. Leaders of political parties who were asked to be invited by the Election Commission cannot challenge the process of election on the ground that the directive issued by the Election Commission was violated by the Chief Electoral Officers. The question is not whether the directions issued by the Election Commission have to be carried out by the Chief Electoral Officers and are binding upon them. The plain answer is that such directions ought to be carried out. The question is whether the failure on the part of the Chief Electoral Officer to comply with the direction ought to be carried out, The question is whether, the failure on the part of the Chief Electoral Officer to comply with the directions issued by the Election Commission furnishes any cause of action to any other person like a voter or a candidate, to complain of it. We are of the opinion that the directions issued by the Election Commission though binding upon the Chief Electoral Officers cannot be treated as if they are law, the violation of which could result in the invalidation of the election, either generally, or specifically in the case of individual in the instant case the Chief Electoral Officer carried out faithfully the directions issued by the Election Commission But, even if he had not, he could not be accused of disobeying a law.”

He also contends that since Article 329(b) of the Constitution of India is also a bar, to challenge any election except in the Manner provide under the 1951 Act then Section 80 has to be read with Section 329(b) and the same has to be judged within the ambit of Section 100(1)(d)(iv).

Learned counsel for the petitioner relies on a few other decisions in the regard but the same need not be dealt with in light of the law having been settled by the Hon'ble Supreme Court in the case of **Shyamdeo Pd. Singh (supra)**. Since no contrary or conflicting opinion has emerged thereafter there is no scope for the High Court to get into any kind of academic discussion on interpretation to be given on the submissions made on behalf of the petitioner.

The law being what it is, and in view of the ratio laid down in the case **Shyamdeo Pd. Singh (supra)** the preliminary objection filed on behalf of the sole respondent does merit consideration. The preliminary objection petition is allowed. The contents of para 1 to 68 and 71 to 76 of the election petition with annexure 1 to 18 are struck off. Since no friable issue under Section 81 read with Section 100 of the Act has been made out, the election petition cannot be maintained or adjudicated upon and the same is summarily dismissed under Section 86 of the Act read with Order XVII Rule 11 of the Code of Civil Procedure.

The Cost is quantified at Rs. 5,000/-

Before parting, however, the Court is constrained to record that the Election commission of India has been made the repository of all powers to get a free and fair election conducted, which reflects the will of the majority, in the candidate returned, by the voters voting in an election, But before the same can happen the Election Commission has a duty to maintain the purity of the electoral rolls in terms of the provisions of the Representation of People Act, 1950 as well as the Registration of Election Rules, 1960. This Court cannot certify that all has been well in preparation of the electoral rolls based on which the election in question came to be held. Since the exercise of power under Section 80 and 80A of The Representation of People Act, 1951 does not allow this Court to examine this aspect of the matter the duty is being cast upon the Election Commission.

The Court directs that a copy of the decision must be communicated to the Chief Electoral Officer, Bihar as well as the Election Commission of India to enable them to ensure that they take all corrective measures in preparation of electoral rolls before any future election in this regard are held in the State of Bihar.

**(Ajay Kumar Tripathi, J.)**

भारत निर्वाचन आयोग

अधिसूचना

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001 दिनांक: 03 सितम्बर, 2014/भाद्रपद 12, 1936 (शक)

सं० 82/बिहार-वि.प./1/2008/2008/2014(बी)- लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 116सी (2) के अनुसरण में, भारत निर्वाचन आयोग पटना शिक्षक निर्वाचन क्षेत्र से बिहार विधान परिषद के लिए एक सदस्य के रूप में श्री नवल किशोर यादव के निर्वाचन पर प्रश्न उठाते हुए श्री जनार्दन प्रसाद सिंह द्वारा दर्ज की गई 2008 की निर्वाचन याचिका सं०. 1 की 2009 की सिविल अपील सं 4372 पर भारतीय उच्चतम न्यायालय के दिनांक 19 सितम्बर, 2013 के आदेश को एतद्वारा प्रकाशित करता है।

आदेश से,  
के. अजय कुमार,  
प्रधान सचिव।

ELECTION COMMISSION OF INDIA

NOTIFICATION

*Nirvachan Sadan, Ashoka Road, New Delhi-110001 Dated : 03<sup>rd</sup> September, 2014/  
Bhadrapada 12, 1936 (Saka)*

No. 82/Br-LC/1/2008/2014(B)—In pursuance of Section 116C(2) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order, dated 19<sup>th</sup> September, 2013, of the Supreme Court of India in Civil Appeal No.-4372 of 2009 in Election Petition No. 1 of 2008 filed by Sh. Janardan Prasad Singh calling in question the election of Sh. Nawal Kishore Yadav as a member of the Legislative Council of Bihar from Patna Teachers' constituency.

By Order,  
K. AJAYA KUMAR,  
Principal Secretary.

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 4372 OF 2009**

JANARDAN PRASAD SINGH  
VERSUS  
NAWAL KISHORE YADAV  
(With office report)

Appellant

Respondent

**(FOR FULL CAUSE TITLE AND DETAILS OF THE HIGH  
COURT PLEASE SEE SCHEDULE “A” ATTACHED HEREWITH)**

Date: 19/09/2013 This Appeal was called on for hearing today.

**CORAM :**

**HON’BLE MR. JUSTICE R.M. LODHA  
HON’BLE MR. JUSTICE MADAN B. LOKUR  
HON’BLE MR. JUSTICE KURIAN JOSEPH**

For Appellant (s)      Mr. Santosh kumar, Adv.  
                                 Mr. V. Sushant Gupta, Adv. For  
                                 Dr. Kailash Chand, Adv.

For Respondent (s)    Mr. Varinder Kumar Sharma, Adv.  
                                 Mr. Yugal Kishor Prasad, Adv.

The Appeal above- mentioned being called on for hearing before this court on the **19<sup>th</sup> day of September, 2013**, UPON perusing the record and hearing counsel for the parties herein, THIS COURT DOTH PASS The following ORDER:

**“2. Civil Appeal is dismissed with no order as to costs.”**

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon’ble Shri Palanisamy Sathasivam, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 19<sup>th</sup> day of September, 2013.

**(ANITA KASHYAP)  
ADDITIONAL REGISTRAR.**

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अधीक्षक, सचिवालय मुद्रणालय,  
बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।  
बिहार गजट (असाधारण) 774-571+50-डी0टी0पी0।  
Website: <http://egazette.bih.nic.in>